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Again, an important part of the law of war has been founded upon a distinction between combatants and noncombatants. Can the distinction be preserved in modern warfare? Finally, it has been considered that one of the most beneficial developments of the past century has consisted in a more accurate definition of the rights and duties incident to neutrality. Can the status of neutrality survive? In short, is there any middle course between a more adequate organization of the society of nations on the one hand and the perpetuation of anarchy on the other? There must come to all who grasp the full significance of the destruction of the *Lusitania* a reinvigorated faith in the statesmanship of those leaders here and abroad who are urging the substitution of international organization for international anarchy.

E. D. D.

LIABILITY OF CORPORATIONS FOR SLANDER.—S. entrusted by the president and general manager of a corporation with the business of obtaining a settlement from plaintiff for a mistakenly supposed shortage in his accounts with the corporation, falsely orally charged him with embezzlement. This charge was made to R., president of another corporation for which the plaintiff was working at the time, and as a step toward getting a settlement by the plaintiff. On the request for a directed verdict, by the defendant, the legal question was presented whether a corporation is liable for slander spoken by the agent of the corporation in the course of his business and in the scope of his authority, and without direction to use, or ratification of the use of, the words spoken, by the directors or chief officers of the corporation. *Held*: the corporation is so liable. *Buckeye Cotton Oil Co. v. Sloan*, (1918, U. S. Dist. Ct. Tenn.), 250 Fed. 712. The court says: "We perceive no sound reason why the liability of a corporation for the act of its agent should differ in an action for slander from that in actions for libel, or other torts, and cannot agree with the view expressed in *Southern Ice Co. v. Black*, (1916), 136 Tenn. 391, 189 S. W. 861, Ann. Cas. 1917 E. 695.

It is only within recent years that a corporation's liability for slander, as for other torts, has become settled in the United States. TOWNSHEND, LIBEL AND SLANDER (3d. Ed. 1877), §265, said there could be no agency in slander; and since a corporation can act only through agents, it would follow that it could not be guilty of slander.

ODGERS, LIBEL AND SLANDER, (1st. Ed. 1881) said: "A corporation will not, it is submitted be liable for any slander uttered by an officer even though he be acting honestly for the benefit of the corporation and within the scope of his duties, unless it can be proved that the corporation expressly ordered and directed that officer to say those very words: for slander is the voluntary and tortious act of the speaker. NEWELL, DEFAMATION, (1st Ed. 1890), p. 361 says substantially the same. No cases are cited by any of these authors. but in 1897, the Queens Bench Division of the High Court of Ontario, in *Marshall v. Railroad Co.*, 28 Ont. 241, by ARMOUR, C. J., says as to one of the counts, "We are all agreed that slander will not lie against a corporation," and would not permit argument on the point. This was a suit

by a workman, discharged under a slanderous charge, by the road master who had authority to hire and discharge an employe.

On the other hand in *Dodge v. Bradstreet* (1880) 59 How. Pr. (N. Y.) 104, and in *Buffalo Lubricating Oil Co. v. Standard Oil Co.* (1886), 42 Hun. (N. Y.) 153, it was held that a corporation could be a party to a conspiracy to slander, and be liable for such slander. MORAWETZ, *PRIVATE CORPORATIONS* (2d. Ed. 1886), par. 727, said a corporation can "be held responsible for libel or slander published by its authority." He cites sixteen cases,—all *libel* or *malicious* prosecution cases, but no *slander* cases. Corporations were held liable for *malicious prosecution* in the United States as early as 1853, in *Goodspeed v. East Haddam Bank*, 22 Conn. 530, 58 Am. Dec. 439, WILGUS, *CORPORATION CASES*, 1296, but in England not till 1900, in *Cornford v. Carlton Bank, Ltd.*, 1 Q. B. 22 C. A. As early as 1858, corporations were held liable for *libel* by the United States Supreme Court in *Philadelphia, etc., R. R. Co. v. Quigley*, 21 How. 202; and in the same year by the English Courts in *Whitfield v. South Eastern Ry. Co.*, El. Bl., & El. 115, 96 E. C. L. 115.

ODGERS, *LIBEL & SLANDER* (5th Ed. 1911) leaves out the statement quoted above, and puts nothing in its place as to *Slander*. NEWELL, *DEFAMATION*, (3d. Ed. 1914), also leaves out the above statement and says a corporation is liable for *libel* if the publication is made by authority, or ratified, or made by one of the corporation's "agents or servants in the course of the business in which he was employed. And the same is true as to slander." He points out correctly that the late cases are not in accord: some holding that the use of the words must be authorized or ratified, officially, to make the corporation liable, as in *Behre v. National Cash Register Co.* (1897), 100 Ga. 213, 62 Am. St. R. 320, 27 S. E. 986. Alabama, (*Republic Iron Co. v. Self*, 192 Ala. 403, 68 So. 328, L. R. A. 1915 F. 516); Kentucky (*Pruitt v. Goldstein Millinery Co.*, (1916), 169 Ky. 655, 184 S. W. 1134,—a partnership case, but citing several Kentucky corporation cases); Massachusetts, (*Kane v. Boston M. L. Ins. Co.*, (1908), 200 Mass. 265, 86 N. E. 302); Michigan, (*Flaherty v. Maxwell Motor Co.*, (1915), 187 Mich. 62, 153 N. W. 45); and Tennessee, (*Southern Ice Co. v. Black*, *supra*) follow this doctrine.

The following, however (with much better reason), hold the corporation liable for slander spoken by an agent or servant in the course of his employment, and in the scope of his authority, the same as for other torts: Arkansas, (*Waters Pierce Oil Co. v. Bridwell*, (191), 103 Ark. 345, 147 S. W. 64, Ann. Cas. 1914 B 837, contrary to what is said in *Lindsay v. Railroad Co.*, (1910), 95 Ark. 534, 129 S. W. 807; Minnesota, (*Roemer v. Brewing Co.*, (1916), 132 Minn. 399, 157 N. W. 640, L. R. A. 1916 E 771); Mississippi, (*Rivers v. Yazoo R. R. Co.*, (1907), 90 Miss. 190, 43 So. 471, 9 L. R. A. (N. S.) 931); Missouri, (*Fensky v. Casualty Co.*, (1915), 264 Mo. 154, 174 S. W. 416, Ann. Cas. 1917 D 963); New York, (*Kharas v. Barron C. Collier, Inc.*, (1916), 157 N. Y. S. 410, overruling *Eichner v. Bowery Bank*, (1897), 24 App. D. 63); North Carolina, (*Sawyer v. Railroad Co.*, (1906), 142 N. C. 1, 54 S. E. 793, 115 Am. St. R. 716, Ann. Cas. 440); Ohio, (*Citizens Gas Co. v. Black*, (1917), 95 Oh. St. 42, 115 N. E. 495, L. R. A. 1917 D

559): South Carolina, (*Hypes v. Southern Ry. Co.*, (1902), 82 S. C. 315, 64 S. E. 395, 26 L. R. A. (N. S.) 873, 17 Ann. Cas. 620); Texas (*Southwestern Telegraph Co. v. Long*, (1916),—Tex. Cri. App.—, 183 S. W. 421); and *Grand Union Tea Co. v. Lord*, (1916, E. Dist. Va.), 231 Fed. R. 390.

There seem to be no English cases directly holding a corporation liable for slander, but in *Citizens Life Assurance Co., Ltd.*, v. *Brown*, (1904), A. C. 423, 73 L. J. P. C. N. S. 102, 90 L. T. N. S. 739, 20 T. L. R. 497, 53 W. R. 176, 6 B. R. C. 675, the Privy Council rules that a corporation is liable for *libel*, "Although the servant may have had no actual authority, express or implied, to write the libel complained of, if he did so in the course of an employment which is authorized." The leading English authors state the corporation's liability for torts in terms broad enough to include liability for slander by an agent in the course of his employment, and within the scope of his general authority, but cite no cases of slander. See ODGERS, *LIBEL and SLANDER*, 5th Ed., p. 592; CLERK and LINDSELL, *TORTS*, Canadian Ed. 1908, pp. 60-63; POLLOCK, *TORTS*, 9th Ed. 1912, pp. 61-63; SALMOND, *TORTS*, 4th Ed. 1916, pp. 60-64; HALSBURY'S *LAW OF ENGLAND*, Vol. 5, Companies, 1910, p. 309; HAMILTON'S *COMPANY LAW*, 2d. Ed., 1901, p. 121, Canadian Ed., 1911, pp. 108-9; LINDLEY, *COMPANY LAW*, 6th. Ed. 1902, p. 257 et seq.; PALMER, *COMPANY PRECEDENTS*, Vol. 1, 1912, p. 38.

There have been several Scotch cases, and in *Finburgh v. Moss' Empires, Ltd.*, (1908), S. C. 928, it was expressly ruled that "an employer (a corporation), is liable for a verbal slander uttered by his servant in the course of the servant's employment and for the benefit of the employer." The court relies upon *Barwick v. English Joint Stock Bank*, (1867), L. R. 2 Ex. 259, (a case of fraud), and *Citizen's Life Assurance Co., Ltd.*, v. *Brown*, *Supra*. In *Aiken v. Caledonian Ry. Co.*, (1913), S. C. 66, where the cases are reviewed, the judges insist that "for the benefit of the employer," are important on the question of liability,—not necessarily meaning that the employer should reap some benefit from the use of the words, but the facts alleged and proved should show "that the verbal slander complained of is a slander that should be held in law to be imputable to the principals, so as to justify the issue that it was a slander uttered by them, by or through their servant." See also *Mandelston v. North British Ry.*, (1917), S. C. 442, to same effect.

H. L. W.

RE-WRITING THE STATUTE OF FRAUDS: PART PERFORMANCE IN EQUITY.—One of the most striking examples of judicial legislation is that process whereby courts of equity, from the end of the seventeenth century onwards, have in no small measure re-written the Statute of Frauds. Exception was added to exception until the doctrine known as "part performance" became firmly established. The doctrine was not evolved consistently and the basis of some applications of it is obscure. One who follows Sir Edward Fry's admirable but futile attempt (Fry, *SPECIFIC PERFORMANCE* (ed. 5) §§ 580, ff.) to systematize the variant decisions of the English courts must feel doubtful whether any single theory will explain all the intricacies of part per-